

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: May 27, 1987
CASE NO. **83-CETA-15**

IN THE MATTER OF
DELORIS G. SUEL

BEFORE: THE SECRETARY OF LABOR

FINAL DECISION AND ORDER

This is the second complaint filed by Deloris G. **Suel** against the Capital Area Training and Employment Consortium (CATEC) under the Comprehensive Employment and Training Act (CETA), 29 U.S.C. §§ 801-999 (**Supp. V 1981**) .1/ Administrative Law Judge (ALJ) Aaron Silverman held in this case, 83-CETA-15 (Silverman Decision), that Complainant's entitlement to relief here depends on precisely what the ALJ held in the first case, **81-CETA-102** decided by ALJ Kenneth A. Jennings. ALJ Jennings' decision in **81-CETA-102** (Jennings Decision) became the final decision of the Secretary under 20 C.F.R. § 676.91(b) (1986).

In **81-CETA-102**, Complainant claimed that she was discriminated against in pay on the basis of race and sex as a staff employee of CATEC. The ALJ held that Complainant had been discriminated against by CATEC on the basis of sex by "assigning [her] position to [the **GS-18**] pay level." Jennings Decision at 8.

1/CETA was repealed by Section 181 of the Job Training Partnership Act (JTPA), 29 U.S.C. §§ 1501-1781 (**1982**), but the legislation contained a provision at 29 U.S.C. § 1591(e), which provided for the continuation of pending proceedings.

He ordered that CATEC pay her backpay based on the difference between her actual salary and the GS-19 salary she should have received from May 31, 1978, to May 20, 1981 when she was laid off. Id. at 11. CATEC made that payment with interest on November 26, 1985. Brief and Statement of the case by Respondent, Exhibit **H**; Brief for Complainant at 3, 9, Appendix C.

The dispute in this case, 83-CETA-15, arises from that 1981 lay-off and the effect of the ALJ Jennings' decision in **81-CETA-102** on it. If the Jennings decision held that Complainant was misclassified as an Administrative Officer I and should have been classified as an Administrative Officer II, she would not have been subject to lay-off under **CATEC's** policy of lay-off by seniority within the classification. If the Jennings decision held only that Complainant was entitled to have been paid at the GS-19 grade as an Administrative Officer I, then she is entitled to no relief here.

It seems clear from the discussion and findings in ALJ Jennings' decision that he was simply holding that Complainant should have been paid at the GS-19 grade as an Administrative Officer I.. In this part of the decision he refers several times to the "GS-18 **pay level**" and the "GS-19 pay level" but he did not link those pay grades to the position of Administrative Officer II. Jennings Decision at 8-9, 11. He found specifically that "Complainant was entitled to be paid at the GS-19 level, as was her then male counterpart in the City [of Jackson, Mississippi] government." Id. at 9. The ALJ also apparently credited the testimony of a city consultant, an expert in

personnel management, who found Complainant's position to be **properly classified** as Administrative Officer I. Id. at 6. Furthermore, the Acting Director of the City of Jackson's Personnel **Department testified** that an Administrative Officer II has supervision of ten to fifteen employees and has duties which are more complex and which entail more responsibility than the Equal Employment Opportunity **function of Complainant.** Id. at 5. Complainant had no employees under her supervision. Id. at 3.

I conclude therefore that the basis of ALJ Jennings' decision that Complainant was discriminated against was that she should have been paid at the GS-19 grade, not that she was misclassified as an Administrative Officer I instead of an Administrative Officer II. I find that her lay off in 1981 was therefore proper, and that Complainant is not entitled to any relief in this proceeding.

Complainant did not argue the issue of illegal retaliation before me. But there is ambiguity in the transcript of the hearing before ALJ Silverman whether Complainant was waiving her complaint of retaliation or only arguing that there was no need for the ALJ to reach it because she believed she was entitled to full relief based on the misclassification issue. See, Transcript of Sept. 17, 1984, hearing at 21, 23, 25, and 32. To the extent that retaliation was not waived and remains an issue in the case, I hold that Complainant is not entitled to any relief on that claim for the following reasons.

Complainant filed an action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-2000e-17 (1982), in the United States District Court for the Southern District of Mississippi, Civil Action No. J82-0008(B), in which she made the same claim of retaliation. After a trial on the merits, the court held that Complainant had not carried her burden of proof and dismissed her complaint. Exhibit "L" to the Brief of the City of Jackson in this case, 83-CETA-15. Without deciding whether I am required to do so, I find it appropriate here, due to the identity of the parties and the issues, to give preclusive effect to that decision. In making this finding,, I am mindful of the apparent lack of any distinct governmental interest which may be adversely affected by deferring to the District Court's decision. cf. Kremer v. Chemical Construction Corporation, 456 U.S. 461 (1982), reh'g denied, 458 U.S. 1133 (1982); In the Matter of the University of Texas at Austin, No. CC-10 (OFCCP) slip op. at 6 (Final Decision and Administrative Order of the Secretary, June 28, 1985).

Accordingly, the decision of the ALJ in this case is REVERSED and the complaint is DISMISSED.

SO ORDERED.


Secretary of Labor

Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: In the Matter of DELORIS G. SUEL

Case No. : 83-CETA-15

Document : Final **Decision** and Order

A copy of the above-referenced document was sent to the following persons on May 27, 1987.

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